

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1400

96TH GENERAL ASSEMBLY

4238H.03P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 67.085, 400.9-311, 408.052, and 443.812, RSMo, and to enact in lieu thereof four new sections relating to financial transactions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 67.085, 400.9-311, 408.052, and 443.812, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 67.085, 400.9-311, 408.052,
3 and 443.812, to read as follows:

67.085. Notwithstanding any law to the contrary, any political subdivision of the state
2 and any other public entity in Missouri may invest funds of the public entity not immediately
3 needed for the purpose to which such funds or any of them may be applicable provided each
4 public entity meets the requirements for separate deposit insurance of public funds permitted by
5 federal deposit insurance and in accordance with the following conditions:

6 (1) The public funds are invested through a financial institution which has been selected
7 as a depository of the funds in accordance with the applicable provisions of the statutes of
8 Missouri relating to the selection of depositories and such financial institution enters into a
9 written agreement with the public entity;

10 (2) The selected financial institution arranges for the deposit of the public funds in
11 [certificates of] deposit **accounts** in one or more financial institutions wherever located in the
12 United States, for the account of the public entity;

13 (3) Each such [certificate of] deposit [issued by financial institutions as provided in
14 subdivision (2) of this section] **account** is insured by federal deposit insurance for one hundred
15 percent of the principal and accrued interest of the [certificate of] deposit;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (4) The selected financial institution acts as custodian for the public entity with respect
17 to [the certificate of] **such** deposit [issued for its account] **accounts**; and

18 (5) [At the same time] **On the same date** that the public funds are deposited [and the
19 certificates of deposit are issued] **under subdivision (2) of this section**, the selected financial
20 institution receives an amount of deposits from customers of other financial institutions equal
21 to the amount of the public funds initially invested by the public entity through the selected
22 financial institution.

400.9-311. (a) Except as otherwise provided in subsection (d), the filing of a financing
2 statement is not necessary or effective to perfect a security interest in property subject to:

3 (1) A statute, regulation, or treaty of the United States whose requirements for a security
4 interest's obtaining priority over the rights of a lien creditor with respect to the property preempt
5 section 400.9-310(a);

6 (2) Sections 301.600 to 301.661, section 700.350, and section 400.2A-304; or

7 (3) A certificate-of-title statute of another jurisdiction which provides for a security
8 interest to be indicated on the certificate as a condition or result of the security interest's
9 obtaining priority over the rights of a lien creditor with respect to the property.

10 (b) Compliance with the requirements of a statute, regulation, or treaty described in
11 subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing
12 of a financing statement under this article. Except as otherwise provided in subsection (d) and
13 sections 400.9-313 and 400.9-316(d) and (e) for goods covered by a certificate of title, a security
14 interest in property subject to a statute, regulation, or treaty described in subsection (a) may be
15 perfected only by compliance with those requirements, and a security interest so perfected
16 remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

17 (c) Except as otherwise provided in subsection (d) and section 400.9-316(d) and (e),
18 duration and renewal of perfection of a security interest perfected by compliance with the
19 requirements prescribed by a statute, regulation, or treaty described in subsection (a) are
20 governed by the statute, regulation, or treaty. In other respects, the security interest is subject to
21 this article.

22 (d) During any period in which collateral is inventory held for sale or lease by a person
23 or leased by that person as lessor and that person is in the business of selling [or leasing] goods
24 of that kind, this section does not apply to a security interest in that collateral created by that
25 person [as debtor].

408.052. 1. No lender shall charge, require or receive, on any residential real estate loan,
2 any points or other fees of any nature whatsoever, excepting insurance, including insurance for
3 involuntary unemployment coverage, and a one-percent origination fee, whether from the buyer
4 or the seller or any other person, except that the lender may charge bona fide expenses paid by

5 the lender to any other person or entity except to an officer, employee, or director of the lender
6 or to any business in which any officer, employee or director of the lender owns any substantial
7 interest for services actually performed in connection with a loan. In addition to the foregoing,
8 if the loan is for the construction, repair, or improvement of residential real estate, the lender may
9 charge a fee not to exceed one percent of the loan amount for inspection and disbursement of the
10 proceeds of the loan to third parties. Notwithstanding the foregoing, the parties may contract for
11 a default charge for any installment not paid in full within fifteen days of its scheduled due date.

12 The restrictions of this section shall not apply:

13 (1) To any loan which is insured or covered by guarantee made by any department,
14 board, bureau, commission, agency or establishment of the United States, pursuant to the
15 authority of any act of Congress heretofore or hereafter adopted; and

16 (2) To any loan for which an offer or commitment or agreement to purchase has been
17 received from and which is made with the intention of reselling such loan to the Federal Housing
18 Administration, Farmers Home Administration, Federal National Mortgage Association,
19 Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or to
20 any successor to the above-mentioned organizations, to any other state or federal governmental
21 or quasi-governmental organization; [and]

22 (3) **To any mortgage broker making loans on manufactured or modular homes; and**

23 (4) Provided that the 1994 reenactment of this section shall not be construed to be action
24 taken in accordance with Public Law 96-221, Section 501(b)(4). Any points or fees received in
25 excess of those permitted under this section shall be returned to the person from whom received
26 upon demand.

27 2. Notwithstanding the language in subsection 1 of this section, a lender may pay to an
28 officer, employee or director of the lender, or to any business in which such person has an
29 interest, bona fide fees for services actually and necessarily performed in good faith in
30 connection with a residential real estate loan, provided:

31 (1) Such services are individually listed by amount and payee on the loan-closing
32 documents; and

33 (2) Such lender may use the preemption of Public Law 96-221, Section 501 with respect
34 to the residential real estate loan in question. When fees charged need not be disclosed in the
35 annual percentage rate required by Title 15, U.S.C. Sections 1601, et seq., and regulations
36 thereunder because such fees are de minimis amounts or for other reasons, such fees need not
37 be included in the annual percentage rate for state examination purposes.

38 3. The lender may charge and collect bona fide fees for services actually and necessarily
39 performed in good faith in connection with a residential real estate loan as provided in subsection
40 2 of this section; however, the lender's board of directors shall determine whether such bona fide

41 fees shall be paid to the lender or businesses related to the lender in subsection 2 of this section,
42 but may allow current contractual relationships to continue for up to two years.

43 4. If any points or fees are charged, required or received, which are in excess of those
44 permitted by this section, or which are not returned upon demand when required by this section,
45 then the person paying the same points or fees or his or her legal representative may recover
46 twice the amount paid together with costs of the suit and reasonable attorney's fees, provided that
47 the action is brought within five years of such payment.

48 5. Any lender who knowingly violates the provisions of this section is guilty of a class
49 B misdemeanor.

443.812. 1. Only one license shall be issued to each person conducting the activities of
2 a residential mortgage **loan** broker. A residential mortgage broker shall register with the director
3 each office, place of business or location in Missouri where the residential mortgage loan broker
4 conducts any part of the residential mortgage loan broker's business pursuant to section 443.839.

5 2. Residential mortgage loan brokers may only solicit, broker, fund, originate, serve and
6 purchase residential mortgage loans in conformance with sections 443.701 to 443.893 and such
7 rules as may be promulgated by the director.

8 3. No residential mortgage loan broker shall permit an unlicensed individual to engage
9 in the activities of a mortgage loan originator and no residential mortgage loan broker shall
10 permit a mortgage loan originator to engage in the activities of a mortgage loan originator under
11 the supervision of the residential mortgage loan broker until that mortgage loan originator is
12 shown to be employed by the residential mortgage loan broker as provided in this section.

13 4. Each residential mortgage loan broker shall report and file a listing with the director
14 showing each mortgage loan originator licensed in Missouri and employed under the supervision
15 of the residential mortgage loan broker. The listing shall show the name and unique identifier
16 of each mortgage loan originator. The listing shall be updated with changes and filed no later
17 than the next business day. The director may authorize a system of reporting that shows
18 mortgage loan originators employed by Missouri residential mortgage loan brokers via the
19 NMLSR in substitution for the report and filing requirement under this subsection.

20 5. The director may grant waivers of residential mortgage loan broker licensing
21 requirements for persons engaged primarily in servicing residential mortgage loans where such
22 waiver shall benefit borrowers including in particular the requirement to maintain a full-service
23 office in Missouri.

24 **6. (1) Notwithstanding any other laws to the contrary, the provisions of this**
25 **subsection shall only apply to residential mortgage loan brokers engaged primarily in the**
26 **business of brokering, funding or purchasing loans that are secured by a manufactured or**
27 **modular home as those terms are defined under Chapter 700. For the purposes of this**

28 subsection, the term “engaged primarily” shall be defined as a residential mortgage loan
29 broker that derives seventy-five percent (75%) or more of its gross income in Missouri
30 from the brokering, funding or purchasing of loans that are secured by a manufactured
31 or modular home as those terms are defined under Chapter 700.

32 (2) No residential mortgage loan broker licensed in this state shall be required to
33 maintain a full-service office in Missouri; except that, nothing in this subsection shall be
34 construed as relieving such broker of the requirements to be licensed in this state and
35 obtain a certificate of authority from the secretary of state's office to transact business in
36 this state.

37 (3) Any residential mortgage loan broker licensed in this state who does not
38 maintain a full-service office in Missouri shall file with the license application an
39 irrevocable consent in a form to be determined by the director, duly acknowledged, which
40 provides that for any suits and actions commenced against the broker in the courts of this
41 state and, if necessary for any actions brought against the broker, the venue shall lie in
42 Missouri.

43 (4) The director may assess the reasonable costs of any investigation incurred by
44 the division which are outside the normal expense of any annual or special examination or
45 any other costs incurred by the division as a result of a licensed residential mortgage loan
46 broker not maintaining a full-service office in Missouri.

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